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HOWISON & ARNOTT, L.L.P.			POLLACK, MELVIN H	
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2141
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/705,514

Applicant(s)

PHILYAW, JEFFRY JOVAN

Examiner

Melvin H Pollack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: see attached office action.

DETAILED ACTION

Priority

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1-32 of this application. The application is a CIP of a CIP of a CIP of an earlier case, as mentioned. For priority to be granted in a CIP, it must be demonstrated that the claims of the child are taught in the parent. In this case, the examiner considers the claims of the child to be new subject matter. Therefore, the new priority date is not granted, and examiner will use the filing date of 02 November 2000, rather than the claimed date of 11 September 1998.
2. The applicant may regain priority by including a copy of the patent and/or parent application with the instant application and demonstrating the location of the subject matter included in the claims. The evidence must be conclusive to regain priority.

Information Disclosure Statement

3. The information disclosure statement filed 9/10/01 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
4. The examiner was able to retrieve, and thus consider, all US patents. Therefore, the applicant only has to send copies of non-patent literature, and copies of foreign patents with at least an English translation of the abstract or summary of invention.

Specification

5. The attempt to incorporate subject matter into this application by reference to a wide variety of related applications is improper because of gaps in the related application information. (See Page 2, line 4 – Page 5, line 5). Several applications are referred to only by docket number. The applicant must amend the specification to replace the blanks with their actual serial numbers. Furthermore, if any of the applications has been issued, abandoned, or otherwise changed in status, the applicant is required to update this section to reflect this data as well.

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

7. The abstract of the disclosure is objected to because of the inclusion of legal phraseology, i.e. "the present invention disclosed and claimed herein." Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

8. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The particular subject

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matter is “releasing a launch signal” and “responsive to the launch signal” as both of these have not been defined in the claims or the specification, let alone given an enablement as the method for using the “launch signals” and performing the said operations.

9. The result is that the precise embodiment of the invention is unclear. Furthermore, the above terms may or may not be related to a wide variety of subjects, including, but not limited to, JAVA threads, link activation, URL generation, FTP, data streaming, content pushing/pulling, and/or “providing control signals” (of a certain type) before or after providing visual cues.

Claim 1 as currently written describes the tasks as involving clicking on a hyperlink or other location access method and cue type. But this would make claim 4 inoperable, as it would imply a user clicking on a link before the link is visible.

10. The applicant is instructed to further explain the definitions of “launch signals” and the methods of “releasing” and “responding” as they relate to other methods of the claim. If said issues are already addressed in the specification, the applicant is required to cite the location of said information. The examiner strongly recommends that the claims be amended to clarify these issues.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 5, 6 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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13. The term "substantially" in claims 5, 6 and 31 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The result of this term is to make imprecise the timing necessary to achieve said implementations. For example, "substantially simultaneous" states that the activities may occur at the same time, or that one may occur a short time period before the other. Because that time period is imprecise – different people consider different time periods to be short – the term must either be removed or defined to be a certain interval, i.e. within three seconds. The examiner strongly recommends that the offending term be removed, as it adds little to the embodiment description.

14. Furthermore, it is unclear what the phrasing "within a predetermined interval of time" means. Is the interval selected by the client, or by the server, or is it a fixed system time? The examiner assumes that both occur in a reasonable period of time, and that the system does not simply hang while processing occurs.

15. Claims 21-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

16. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v.*

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HydReclaim Corp., 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “training the user” in claim 21 is used by the claim to mean “alert or attract the user to look at the screen”, while the accepted meaning is “teach the user.” The term is indefinite because the specification does not clearly redefine the term. Furthermore, the term “train the user to anticipate the result of the control action” has the accepted meaning of “teach the user to predict a future event,” i.e. through a Pavlovian response to a particular cue. The examiner requires that claims 21 and 29 be amended to remove the offending term and to replace it with one closer to the desired meaning of the claim.

17. Claims 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the element that recognizes and identifies the sound signal. From claim 1, it would seem that the user selecting the launch signal would have to recognize it. This would seem to be more the case in claims 15 and 16, wherein the launch signal is a visible picture such as a logo. However, claims 12 and 13 state that the signal is inaudible to a human. So is the entity an animal? Is it a computer? Further, there is a lack of usage regarding the sound signal; it provides no functional use as currently drawn. The examiner requires the applicant to amend the claims to provide an explanation regarding who or what recognizes the signal and to clarify what the signal is used for and why it should be identifiable.

18. Claim 16 recites the limitation "visual indicia" in claim 1. There is insufficient antecedent basis for this limitation in the claim. The examiner assumes for this office action that

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the applicant refers to the visual cue(s) or parts thereof. The applicant is required to amend the claim to correct this issue.

19. Claims 22-24 as currently drawn have severe problems in dependencies. As drawn, claim 22 is dependent on claim 24, which is dependent on claim 23, which is dependent on claim 22, which is dependent on claim 24, and so on. None of these claims, meanwhile, can be traced as dependent on claim 21, the assumed independent claim. The examiner requires that the applicant amend at least one of these claims to fix this problem. For now, the examiner assumes that claim 24 is dependent on claim 23, which is dependent on claim 22, which is dependent on claim 21.

Claim Rejections - 35 USC § 102

20. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

21. Claims 1-8, 10, 17, 18, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Portuesi (5,774,666).

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22. For claim 1, Portuesi teaches a method (see abstract) for facilitating computer based access to a location on a network (col. 1, lines 5-15) by a consumer witnessing a presentation (col. 2, lines 15-38), comprising the steps of:

- a. Providing a visual cue (Fig. 3, #32) during the presentation apparent to the consumer (Fig. 3, #28; col. 2, lines 39-52) and indicative of a relationship between the visual cue and the presence of the location on the network (col. 3, #34); and
- b. Releasing a launch signal in association with the visual cue (col. 1, lines 42-52; col. 2, lines 30-35) wherein a computer having an input device (Fig. 1, #14) responsive to the launch signal (col. 2, lines 52-55) is enabled thereby to access the location on the network upon the appearance of the visual cue (col. 2, lines 55-60).

23. For claim 2, Portuesi teaches attracting the consumer's attention to the computer for interacting with the location on the network in association with the access thereto (col. 5, lines 5-10; col. 6, lines 40-45).

24. For claim 3, Portuesi teaches the step of providing a visual cue precedes the step of releasing the launch signal (col. 5, lines 25-30).

25. For claim 4, Portuesi teaches that the step of releasing the launch signal precedes the step of providing a visual cue (col. 5, lines 40-45).

26. For claim 5, Portuesi teaches that the steps of providing the visual cue and releasing the launch signal occur substantially simultaneously (col. 6, lines 4-6).

27. For claim 6, Portuesi teaches the steps of providing the visual cue and releasing the launch signal occur substantially within a predetermined interval of time (col. 6, lines 4-6).

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28. For claim 7, Portuesi teaches the steps of animating the visual cue during its appearance wherein the animation is accompanied by the launch signal.

29. For claim 8, Portuesi teaches that detaching one or more moving segments from a stationary portion of the visual cue, and traversing a path with each detached segment about the stationary portion of the visual cue to a predetermined position adjacent thereto (col. 6, lines 20-45).

30. For claim 10, Portuesi teaches that the stationary portion of the visual cue forms an iconic figure and the moving segment resembles an element of said iconic figure (Fig. 4, #40).

31. For claim 17, Portuesi teaches that the presentation witnessed by the consumer includes a program having audio and video content (Fig. 2).

32. For claim 18, Portuesi teaches that the presentation witnessed by the consumer includes a broadcast communication having audio and video content (col. 8, lines 53-56).

33. For claim 20, Portuesi teaches that the presentation witnessed by the consumer includes a recorded presentation (col. 4, lines 14-17).

34. Claims 21-25 and 27-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Stern (6,591,247).

35. For claim 21, Stern teaches a method (see abstract) for interfacing a user to the result of a control action (col. 1, lines 30-36) while the user is viewing a first viewing surface (Fig. 2, #70), comprising the steps of:

- a. Providing the user a visual cue proximate the first viewing surface (col. 3, lines 50-65);

b. Providing a control signal in conjunction with the visual cue, the control signal causing a control action to be taken on a user device that will cause the user device to undergo a control action to provide the result of the control action (Fig. 4, 400; col. 6, lines 27-35; content is pushed into the store kiosks, based on user feedback); and

c. Wherein the visual cue is operable to train the user to anticipate the result of the control action after viewing thereof (col. 6, lines 35-55).

34. For claim 22, Stern teaches that the visual cue is provided on the first viewing surface at a predetermined location thereon (Fig. 2, #70).

35. For claim 23, Stern teaches that the first viewing surface is operable to provide to the user a broadcast video program (col. 4, lines 45-55).

36. For claim 24, Stern teaches that the step of providing the user a visual cue comprises providing a distinct visual cue such that the visual cue can be perceptibly discriminated from the broadcast program (col. 17, lines 25-45).

37. For claim 25, Stern teaches that the broadcast program includes audio in association with the broadcast program (col. 5, lines 40-45).

38. For claim 27, Stern teaches that the user device is a computer having a display associated therewith as a second viewing surface (Fig. 2, #30a, and #96) and the result of the control action is to provide information on the display and wherein the control signal is operable to cause the display to provide on the associated display information that is associated with the presentation of the visual cue to the step of providing the visual cue to the user (col. 24, lines 40-45).

39. For claim 28, Stern teaches that the step of causing the computer to display information comprises the steps of:

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- a. Connecting the computer through a network to a remote site on the network in response to receiving the control signal (col. 4, lines 55-65; col. 5, lines 5-10); and
 - b. After connecting to the remote site, returning from the remote site to the computer information associated with the control signal (Fig. 1, #28).
40. For claim 29, Stern teaches that the visual cue is operable to train the user to view the displayed information after the step of providing to the user a visual cue (col. 6, lines 40-45; barker cue).
41. For claim 30, Stern teaches that the step of providing a control signal occurs before the step of providing the user a visual cue (Fig. 3, #112).
42. For claim 31, the step of providing the user a visual cue and the step of providing the control signal occur substantially simultaneously (col. 12, lines 55-65).
43. For claim 32, the step of providing to the user a visual cue occurs prior to the step of providing the control signal (col. 17, lines 1-15).

Claim Rejections - 35 USC § 103

44. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

45. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Portuesi as shown in claims 1, 7, and 8 above.
46. For claim 9, Portuesi does not expressly disclose that the stationary portion of the visual cue forms an alphanumeric character and the moving segment resembles a punctuation mark.

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Examiner takes Official Notice (see MPEP § 2144.03) that the particular design of the visual cue mentioned above, in a computer networking environment, was well known in the art at the time the invention was made. That is, it has already been shown that a visual cue is made of a stationary picture and a moving picture, and the examiner concludes that it would be trivial and obvious to replace one picture with another. Furthermore, this particular display adds no functionality over a different type of display in which part of the system moves. At the time the invention was made, one of ordinary skill in the art would have used the aforementioned pictures for aesthetic design purposes.

47. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03. However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

48. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Portuesi as applied to claim 1 above, and further in view of Ludwig et al. (6,237,025).

49. For claim 19, Portuesi does not expressly disclose that the presentation witnessed by the consumer includes a live presentation. Ludwig teaches a method (see abstract) of videoconferencing (col. 21, lines 45-55) in which active URLs may be embedded into the

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presentation (Fig. 30). At the time the invention was made, one of ordinary skill in the art would have combined the two inventions in order to allow real-time information to be transmitted (col. 4, lines 55-65).

50. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Portuesi as applied to claim 1 above, and further in view of Jensen et al. (6,421,445).

51. For claim 11, Portuesi does not expressly disclose the step of releasing a launch signal comprises providing a sound signal having a recognizable characteristic that is identifiable each time it occurs. Jensen teaches a method (see abstract) for a broadcast system (col. 1, lines 18-21) in which command signals are embedded in audio signals (col. 2, lines 6-9). At the time the invention was made, one of ordinary skill in the art would have used Jensen in a Portuesi system in order to fulfill a variety of broadcasting purposes, such as tracking of ratings (col. 31, lines 44-45) and commercials (col. 33, lines 25-30).

52. For claim 12, Portuesi does not expressly disclose the step of providing a sound signal comprises the step of releasing a launch signal that is not audible to a human. Jensen teaches this limitation (col. 2, lines 1-5). At the time the invention was made, one of ordinary skill in the art would have made the codes inaudible so as not to intrude on other audible tones (col. 1, lines 10-20 and 38-48).

53. For claim 13, Portuesi does not expressly disclose that the frequency of the sound signal is outside the range of human hearing. Jensen teaches this limitation (col. 2, lines 10-20). At the time the invention was made, one of ordinary skill in the art would have made the codes inaudible so as not to intrude on other audible tones (col. 1, lines 10-20 and 38-48).

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54. For claim 14, Portuesi does not expressly disclose that the intensity of the sound signal is below the threshold of human hearing. Jensen teaches this limitation (col. 2, lines 20-25; signal amplitude). At the time the invention was made, one of ordinary skill in the art would have made the codes inaudible so as not to intrude on other audible tones (col. 1, lines 10-20 and 38-48).

55. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Portuesi as applied to claim 1 above, and further in view of Itoh et al. (6,487,719).

56. For claim 15, Portuesi does not expressly disclose the step of releasing a launch signal comprises the step of providing a light signal having a recognizable characteristic that is identifiable each time it occurs. Itoh teaches a method (see abstract) in which a monitoring of a broadcast (col. 1, lines 5-15) is achieved through light control signals (col. 3, lines 27-54). At the time the invention was made, one of ordinary skill in the art would have used Itoh to perform channel monitoring (col. 3, lines 1-27).

57. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Portuesi as applied to claim 1 above, and further in view of Hill (5,970,471).

58. For claim 16, Portuesi does not expressly disclose that the visual indicia includes a logo. Hill teaches a method (see abstract) for a commercial broadcast system (col. 1, lines 1-20) in which a user selects icons representing products (col. 1, line 64 – col. 2, line 23), i.e. a logo (col. 7, lines 7-17). At the time the invention was made, one of ordinary skill in the art would have

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used a Hill logo system in order to provide the user with a visual indication of the browsed item (col. 2, lines 24-37).

59. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern as applied to claim 21 above, and further in view of Jensen, as applied above.

60. For claim 26, Stern does not expressly disclose the step of providing a control signal in conjunction with the visual cue comprises providing an audio control signal. . Jensen teaches a method (see abstract) for a broadcast system (col. 1, lines 18-21) in which command signals are embedded in audio signals (col. 2, lines 6-9). At the time the invention was made, one of ordinary skill in the art would have used Jensen in a Stern system in order to fulfill a variety of broadcasting purposes, such as tracking of ratings (col. 31, lines 44-45) and commercials (col. 33, lines 25-30).

Conclusion

61. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H Pollack whose telephone number is (703) 305-4641. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MHP

31 March 2004



RUPAL DHARIA
SUPERVISORY PATENT EXAMINER